No. 11,306

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

TAKEO TADANO,
Appellant,

vs.

O. W. MANNEY, Officer in Charge, United States Immigration and Naturalization Service at Phoenix, Arizona,
Appellee.

APPELLANT'S REPLY BRIEF.

E. G. FRAZIER,
CHARLIE W. CLARK,
301-2 Phoenix National Bank Building, Phoenix, Arizona,
Attorneys for Appellant.

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Table of Authorities Cited

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Appellee concedes (page 5) that petitioner's exempt status as a non-immigrant trader is determined by the provisions of the Acts of 1924 as they existed at the time of his entrance rather than by later amendments which may have imposed additional conditions and further concedes that under Clause 6, Section 3 of the Act of 1924, a Japanese trader is not limited to commerce between the United States and Japan but may engage in public domestic mercantile activities.

Appellee further concedes (page 7) that the presiding inspector at petitioner's deportation hearing proceeded under the erroneous theory that the 1932 Amendment applied. In *Reynolds v. Salt River Valley Water Users' Association,* 143 Fed. (2d) 863, the

United States Circuit Court of Appeals held that the employees who produced and regulated the flow of the water which was but one of the proximate causes of the vegetable growth were engaged in commerce and quoted with approval from *Kirschbaum v. Walling,* 316 U. S. 516, and even should we accept appellee's theory that petitioner had engaged in farming he would still, under the more recent holdings of the United States Courts, be engaged in commerce and we submit that whichever view the Court should take, he has never departed from the exempt status for which he was admitted.

Nowhere is it suggested that appellant was ever advised by anyone connected with the Immigration Service that the appellee would rely upon abrogation of the treaty as a grounds for his deportation. This is admitted by appellee and the only serious contention appellee makes in his brief is that the treaty having been abrogated appellant is now subject to deportation whether he ever had a hearing or not upon that ground.

From cases we have cited in our opening brief it seems to us that such proceeding is not competent under our system of government and that deportation is to be had only after full hearing upon the charge laid in the warrant and, while we do not try the issue of what his defense to such a charge might be, it is not impossible that he has matters to present which could not be presented other than in the departmental proceedings. In view of the grave consequences of deportation to a man who has, since coming to

America, married and raised a family and who has his roots deeply imbedded in the soil of America, we believe this case necessitates a consideration upon the law and the evidence taken before the Board of Immigration Appeals and a decision which protects all of the rights of the appellant.

We feel that the order of the District Court should be reversed and if the Department of Immigration and Naturalization has good grounds for deporting appellant upon the theory that the Treaty has been abrogated then let them regularly proceed and permit appellant to make his further defense and have a ruling on the merits of that particular charge.

We respectfully submit that the order of the Court discharging the Writ of Habeas Corpus should be reversed with directions to the trial Court to discharge appellant from custody.

Dated, Phoenix, Arizona,
December 23, 1946.

Respectfully submitted,
E. G. Frazier,
Charlie W. Clark,
Attorneys for Appellant.